

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

D&T PARTNERS, LLC, successor-in-interest	§	
to ACET Venture Partners, LLC, <i>et al</i>	§	
	§	
<i>Plaintiff,</i>	§	
	§	Civil Cause: 3:21-CV-1171-B
v.	§	
	§	
BAYMARK PARTNERS, LP, <i>et al.</i> ,	§	
	§	
<i>Defendants.</i>	§	

**WINDSPEED EMPLOYEES' MOTION TO DISMISS CLAIMS  
FIRST AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6)**

TO THE HON. JANE J. BOYLE;  
UNITED STATES DISTRICT JUDGE:

COMES NOW in this cause defendants Ms. Zhexian Lin ("Lin"), Ms. Dana Marie Tomerlin ("Tomerlin"), Ms. Padasamai Vattana ("Vattana"); Ms. Paula Ketter ("Ketter"), Ms. Vanessa Torres ("Torres" and together with Lin, Tomerlin, Vattana and Ketter the "Windspeed Employees"), and files this, its *Windspeed Employees' Motion to Dismiss First Amended Complaint Pursuant to Rule 12(b)(6) and Brief in Support* (the "Motion"). In support of the Motion, Plaintiff would respectfully show the Court as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the controversy under 28 U.S.C. § 1332.
2. Venue is proper in the Northern District of Texas, Dallas Division, under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions that give rise to the controversy occurred in this Division and District. The statutory predicate for this Motion is FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6).

## **II. RELIEF REQUESTED AND BASIS THEREFORE**

3. Pursuant to FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6), this Motion seeks to dismiss all claims asserted by D&T Partners, LLC (“Plaintiff”), directly and derivatively on behalf of ACET Global, LLC (“ACET”) and Baymark ACET Holdco, LLC (“Holdco”), against the Windspeed Employees. As alleged in other motions to dismiss filed by the other defendants in this matter, Plaintiff lacks standing to assert claims on behalf of ACET and Holdco. Dismissal of Counts I-III is sought as Plaintiff fails to plausibly allege that the Windspeed Employees are RICO “persons” in a racketeering enterprise and fails to meet the Rule 9(b) heightened standards that the Windspeed Employees had the specific intent to participate in racketeering activity. Furthermore, dismissal of Counts VI-VIII (the “State Court Claims”) against the Windspeed Employees is warranted because Plaintiff does not plausibly assert facts upon which these claims for relief can be granted. Furthermore, most of these claims are premised on allegations of fraud, which require Plaintiff to adhere to the heightened standards of Rule 9(b). Plaintiff fails to make any allegations evidencing a specific intent of fraud from any of the Windspeed Employees.

## **III. CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Windspeed Employees respectfully pray this Court grant the Motion and dismiss with prejudice all causes of action asserted by Plaintiff. The Windspeed Employees further respectfully request any additional relief to which they may be justly entitled.

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Dated: November 3, 2021  
Dallas, Texas

HIGIER ALLEN & LAUTIN, PC

By: /s/ Gordon W. Green

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VATTANA; MS. PAULA KETTER, MS.  
VANESSA TORRES**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3<sup>rd</sup> day of October 2021, a true and correct copy of the foregoing document was served *via* the Court's ECF system and by email to the following parties.

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